

**United States Environmental Protection Agency  
Criminal Investigation Division  
Investigative Activity Report**

**Case Number**

0506-0026

**Case Title:**

Ferguson Enterprises Inc.

**Reporting Office:**

Detroit, MI, Resident Office

**Subject of Report:**

Interview of (b)(6), (b)(7)(C)

**Activity Date:**

September 23, 2011

**Reporting Official and Date:**

(b)(6), (b)(7)(C), ASAC

04-OCT-2011, Signed by: (b)(6), (b)(7), ASAC

**Approving Official and Date:**

(b)(6), (b)(7)(C), SAC

14-OCT-2011, Approved by: (b)(6), (b)(7), SAC

**SYNOPSIS**

On August 19th and September 23rd, 2011, U.S. EPA CID Special Agent (SA) (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) former clerk and Special Adjunct for U.S. District Court Judge John Feikens, regarding (b)(6) involvement in the court's oversight of the Detroit Water & Sewerage Department and the federal Consent Order in case USA et al v City of Detroit (2:77-cv-71100).

**DETAILS**

On August 19th and September 23rd, 2011, U.S. EPA CID Special Agent (SA) (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) former clerk and Special Adjunct for U.S. District Court Judge John Feikens, regarding (b)(6) involvement in the court's oversight of the Detroit Water & Sewerage Department and the federal Consent Order in case USA et al v City of Detroit (2:77-cv-71100). The August 19th interview was limited due to (b)(6), need to clarify the constraints of the oath (b)(6) took as Feikens' clerk with Judge Sean Cox who has taken over the case since Feikens' passing. Present during the September 23rd interview was Assistant U.S. Michael Bullotta. (b)(6), explained to SA (b)(6), (b)(7) and AUSA Bullotta that (b)(6) had been given direction and counsel by Judge Cox as to what topics (b)(6) could and could not discuss with the agent, given (b)(6) oath of office.

(b)(6), officially resigned as Special Adjunct with the court effective September 9, 2011 as (b)(6) accepted a position with the Michigan Economic Development Corporation (MEDC) as Chief of Energy Policy. (b)(6), had worked at the Bodman law firm from February of 2007 until (b)(6) appointment to the MEDC. (b)(6), was a clerk for Feikens from August of 2003 until joining Bodman in February of 2007. (b)(6), started as a term clerk but eventually became a career clerk. About two months after leaving (b)(6) clerk position (b)(6), was named Special Adjunct via an order of the court which was independent of Tom Lewand's appointment as Special Master.

(b)(6), provided a list of clerks which served in Feikens' court:  
(b)(6), (b)(7) : February 2002 to July of 2003. Wang currently resides in California.  
(b)(6), (b)(7) : February 2001 to February 2002.  
(b)(6), (b)(7)(C) : 2001 to 2003.

(b)(6), attended meetings with the IMG staff and Judge Feikens through the years. (b)(6), (b)(7) was the "relationship partner" from IMG while (b)(6), (b)(7) did most of the actual review of the contracts from 2005 on. (b)(6), is no longer employed by IMG and resides in Houston, Texas. (b)(6), (b)(7) substituted in for (b)(6), or assisted (b)(6) in reviewing contracts as well.

(b)(6), described IMG's role as reviewing the contracts to ensure that they complied with construction and industry standards, for proper business terms and the appropriateness of any

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provisional allowances. IMG was not a part of the bid evaluation process but would receive the bid scoring sheets after the evaluation committee made their recommendations. IMG often noted that the DWSD contracts included unusually high provisional allowances. It was the opinion of the IMG staff that any changes to the contracts should be handled under a change order and not provisional allowances. IMG did review approximately 10% of the change orders for contracts. A dispute arose because IMG spent as much money (and thus time) reviewing change orders as contracts. IMG's position was that they spent time fixing contract and change order issues before they had to rise to the level of judicial review.

(b)(6), attended meetings between Judge Feikens and Mayor (b)(6), (b)(6), (b)(6). One meeting stood out to (b)(6), in particular as it was the only one (b)(6) could recall that was requested by (b)(6), (b)(7)(C). (b)(6), made the request for the meeting nearly immediately after Judge Feikens issued an order terminating Kilpatrick's Special Administrator authority. The meeting took place in early 2006 and it seemed to (b)(6), that (b)(6), (b)(6) was very upset and clearly did not see the termination of (b)(6) Special Administrator authority coming. (b)(6), (b)(6) explained to Judge Feikens, in (b)(6), presence, that there was a series of five contracts (b)(6) was about to award and implored the judge to award the contracts that day. (b)(6), (b)(6) asked "can't you just approve them?" It was the first the court had heard of the contracts, which was not unusual as they typically weren't notified until after (b)(6), (b)(6) had approved contracts using (b)(6) Special Administrator powers. (b)(6), pointed out that Judge Feikens in (b)(6) termination order noted that the federal court could still exercise contract awarding authority.

Judge Feikens explained to (b)(6), (b)(6) that (b)(6) was not going to approve the contracts that day, and there was a proper process by which the Mayor and the DWSD could make such a request. That process including making a written request which would then received through the court docket for approval. (b)(6), (b)(6) told Judge Feikens that the contracts needed to be approved quickly as all of them were related to work being done by the Michigan Department of Transportation (MDOT). When asked why it was so important that the contracts be done quickly (b)(6), (b)(6) replied that MDOT was repairing streets and it would cost the city a lot more if they had to re-pave them. (b)(6), (b)(7) rationale was that if the contracts went through City Council they would be approved too late and thus it would cost the city money. Judge Feikens asked (b)(6), (b)(6) if IMG had reviewed the contracts to which (b)(6), (b)(6) said (b)(6) did not know. According to (b)(6), Judge Feikens avoided asking the particulars of the five contracts as (b)(6) wanted the issues to be on the docket.

During this meeting (b)(6), (b)(6) "informally" requested that the Judge re-instate (b)(6) as the Special Administrator, explaining the continuing need to quickly approve contracts. Judge Feiken's only explanation was to say "you've seen the opinion." (b)(6), (b)(6) did not ask why (b)(6) Special Administrator authority was revoked. (b)(6), pointed out that the tone of the Judge's opinion was favorable to (b)(6), (b)(6).

(b)(6), was shown a letter from (b)(6), (b)(6) to Judge Feikens dated February 27, 2006. (See Attached) (b)(6), recognized the letter and noted that it had been docketed in this matter. (b)(6), thought that (b)(6) may have been the person who walked the letter down to the clerk's office to have it added to the docket. The letter was docketed so that all parties to the civil case could give their objections or comments to the awarding of the contracts. (b)(6), recalled that one objection was filed but had to do with the court using its contracting authority on water main contracts verses

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sewage system contracts. Judge Feikens did not question (b)(6), (b) on the fact that Ferguson Enterprises Inc was the contract holder for three of the five proposed change order approvals as (b) was waiting for (b)(6), (b) report on contract DWS 844A at the time. (b)(6), does not recall any discussions between (b)(6), (b) and Judge Feikens regarding the request to extend DWSD Director (b)(6), (b) (7)(C) contract but thought that those discussions could have happened.

(b)(6), recalled at least two occasions when (b)(6), (b) told Judge Feikens, in (b) presence, that (b) didn't need the oversight of IMG anymore. (b)(6), (b) rationalization was that while IMG helped in implementing cost control measures on the operational side of the department they had not added a lot of value when it came to contract evaluation and oversight and had cost the DWSD a lot of money and time. (b)(6), explained that IMG worked out any issues they had when it came to a contract with (b)(6), (b) prior to briefing the court, so it could be perceived that IMG wasn't raising any substantial concerns.

Judge Feikens first asked (b)(6), to look into the allegations of preferential treatment of Ferguson Enterprises after the news paper articles about out about the awarding of contract 844A. (b)(6), characterized this request as informal at first but was later formalized.

Judge Feikens watched the Synagro contract evaluation and negotiation process closely as this was related to the DWSD's waste water treatment plant's compliance with the Clean Water Act and the facility's permit. Feikens asked about this contract a number of times at oversight meetings which were held on a monthly basis. Typical attendees at the oversight meetings were (b)(6), (b) IMG staff, (b)(6), Feikens as well as other individuals (b)(6), called (b)(6), and said "you are aware that we haven't seen this contract." (b)(6), thought this call took place when the contract was before City Council for the second time. (b)(6), relayed this information to Judge Feikens who called (b)(6), (b) and told (b) to get the contract to IMG. Feikens was clearly upset during this call with (b)(6), (b) Judge Feikens did not ask (b)(6), (b) why the DWSD hadn't sent the contract to IMG which (b)(6), characterized as being Feikens' nature.

Feikens told (b)(6), (b) and (b)(6), (b) that if the City Council didn't approve the contract that (b) would. (b)(6), explained that Feikens believed in the contract. (b)(6), explained that Feikens made this statement after the contract had been defeated by the City Council. The court was projecting the votes the contract would receive for the second vote and didn't think that it would pass. (b)(6), characterized Feikens as getting impatient with the process and told (b)(6), (b) to ask (b) (Feikens) to approve the contract. (b)(6), (b) assured the judge that "we will get this to pass." Feikens also called (b)(6), (b) and told (b)(6), (b) to send (b) the contract for approval. (b)(6), (b) asked the judge to give (b) some time to get it through Council.

The 800 MHz radio contract was discussed several times at the monthly oversight meetings. At some point the court learned that the contract had not been sent to IMG for review. Once (b) found this out Judge Feikens ordered (b)(6), (b) to send this contract to IMG for their review. It was after the court learned that IMG was not asked to review both 844A and the 800 MHz contracts that IMG started attending all of the Board of Water Commissioners meetings to ensure there weren't any other contracts which the DWSD were entering into that they hadn't reviewed. (b)(6), pointed out that IMG staff had to fly in for the meeting and incur travel costs, which drove up their billing to the DWSD. It was around this time that (b)(6), (b) started complaining about not needing IMG.

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(b)(6), was shown a copy of an IMG Summary of Work for August-September of 2007. (See Attached) SA (b)(6), (b)(7) pointed out the entry regarding the DWSD's decision not to seek liquidated damages over project delays for contract 844A. (b)(6), does not recall exactly what was discussed and would need to consult (b) notes from the meeting which are currently maintained in the Bodman files. (b)(6), does recall discussing with the IMG staff that they needed to document what they were receiving from the department on issues such as this.

(b)(6), was then shown a document titled "Personal and Confidential" and "Detroit Water & Sewer Department 2006 Contract Procurement Oversight Activities." (See Attached) (b)(6), did not recognize this document but thought that given the contents it would have been written by IMG staff. SA (b)(6), (b)(7) pointed out the entry regarding contract WS 623 which states that the Board rejected staff recommendation to award a \$5.7 million change order. (b)(6), explained that at the time of (b)(6), (b)(7) request that Judge Feikens approve change order for this contract (b) was not aware that the Board had already rejected it. (b)(6), commented that (b) was "100% sure that the court was not informed" at the time of the request that the Board had rejected the WS 623 change order.

(b)(6), explained that (b) would like to seek clarification from Judge Cox on (b) ability to discuss the court's approval of the five contracts with the agent as (b) was concerned that it could include providing answers on the court's deliberative process. SA (b)(6), (b)(7) and AUSA Bullotta agreed that all parties needed to seek this clarification before questioning (b)(6), any further on this topic.

**ATTACHMENT**

Special Administrators Order 2004-11

(b)(6), (b) Request for Approval of Contracts

IMG Summary of Work August/September 2007

2006 Contract Procurement Oversight Activities